

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

EJ LEJEUNE, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARY SITUATED; HENRY TORRES VILLEGAS, JOSE A. REYES DIAZ, JULIO LOPEZ RIOS, ISRAEL DIAZ, LUIS M. RODRIGUEZ, WILFREDO SANCHEZ, KELVIN CULP, KERRY POOL, DARIN REID, FORREST SMITH, DARREN GULIN, CRAIG WRIGHT, JOSHUA GRIMES, BOBBY PATTON, STEVE EBEL, BRIAN KOPP, RICHARD GIBSON, MIKE SIELICKI, BENNETT ELLIOTT, OSCAR CASTANOJR., DOMINGO DE LA GARZA, DYLAN SUTTON, CHARLES FOSS, KEVIN AHEARN, COURTNEY BEASLEY, ROCKY COCHRAN, ENSLEY WINDHAM, TYLER NEGRI, RICARDO BENAVIDESJR., ZACHARY AKEY, DANIEL PERALES, ALEXANDRE PENNANT, CHARLES ENMANJR., RUBEN TREJO, MICHAEL TUCKER, MANOLO MAURIZ, MAX HIDALGO, ESEQUIEL NAVEJAS, MARIO BELLAMY, NEYSHA DIAZ, JON-MIKEL MOODY, GIOVANNI PEREZ, JON-MIKEL MOODY, STEVEN T. SALMON, PORTALATIN M. TORRES, JOHN NEGRI.

SA-19-CV-00286-JKP

Plaintiffs,

VS.

COBRA ACQUISITIONS, LLC,
ESPADA LOGISTICS AND SECURITY
GROUP, LLC, ESPADA CARIBBEAN,
LLC, JAMES JORRIE, JENNIFER GAY
JORRIE.

Defendants.

ORDER

Before the Court is the above-styled cause of action, which was referred to the undersigned for all pretrial proceedings. The record reflects that on July 31, 2020, the Court

conditionally certified a class of “all individuals engaged by ESPADA to provide services to Cobra in Puerto Rico between January 21, 2017 and the present who were paid a day-rate.” The Court additionally held that notice recipients shall have 60 days following the date on which notice is set to file a proper and complete consent form with the Court and that Plaintiff may provide reminder notice by mail and email, with language agreed upon by the parties, 45 days after notice is sent. The Court ordered the parties to confer on the remaining disputed issues related to notice and to file a joint notice or, if no agreement could be reached, joint competing notices for the Court’s consideration.

The parties could not agree on two issues—whether to include notice via text message and whether to include certain language advising potential class members of the responsibilities associated with joining this litigation. Plaintiffs filed their Notice of Proposed Notice Documents [#104] and a Brief in Support [#105]. Defendants set forth their position in a Joint Motion to Approve Their Proposed Notice Procedure [#106].

Having reviewed the parties’ filings, the Court will allow notice via mail, email, and text message and will also include Defendants’ proposed advisory language. District courts have permitted notice to potential class members in FLSA collective actions by text message in addition to other more traditional notice methods in certain circumstances. *See, e.g., Dickensheets v. Arc Marine, LLC*, 440 F. Supp. 3d 670, 672 (S.D. Tex. 2020) (collecting cases). *See also Cervantez v. TDT Consulting, LLC*, No. 3:18-CV-2547-S-BN, 2019 WL 3948355, at *10 (N.D. Tex. July 22, 2019) (permitting notice via text message); *Goss v. Tyler Traditions, Inc.*, No. 6:18-CV-423-JDK, 2019 WL 4935290, at *6 (E.D. Tex. July 22, 2019) (same); *Lopez v. Bird Elec. Enters., LLC*, No. MO:18-CV-0231-DC-RCG, 2019 WL 4087578, at *2 (W.D. Tex. June 28, 2019) (same); *Qazi v. Stage Stores, Inc.*, No. 4:18-CV-780, 2019 WL 2523564, at *3

(S.D. Tex. June 18, 2019) (same). The purpose of notice is to inform potential class members of a pending lawsuit and provide the opportunity to join the case. *Dickensheets*, 440 F. Supp. 3d at 672 (citing *Wade v. Furmanite Am., Inc.*, No. 3:17-CV-00169, 2018 WL 2088011, at *7 (S.D. Tex. May 4, 2018)). Federal courts have already begun to recognize that our “primary methods of communication have evolved” to include “text messages and phone calls to cellular telephones.” *M.A. by Ashear v. NRA Grp., LLC*, No. 17-CV-7483 (NG)(RLM), 2019 WL 2357767, at *2 (E.D.N.Y. June 4, 2019). “The reality of modern-day life is that some people never open their first-class mail and others routinely ignore their emails.” *Lawrence v. A-1 Cleaning & Septic Sys., LLC*, No. 4:19-CV-03526, 2020 WL 2042323, at *5 (S.D. Tex. Apr. 28, 2020). Most people, however, regularly check their text messages. *Id.*

In this case, text message notice would be particularly helpful in facilitating actual notice of this pending lawsuit to potential class members, as the proposed class involves disaster relief workers who work in remote locations and remain far away from home for extended periods of time. The Court therefore finds that providing text message notice in addition to the mail and email notice already ordered will advance the ultimate goal of providing potential class members with the opportunity to join this case.

The Court also finds that notice recipients should be informed of their potential obligations in this lawsuit. Defendants ask the Court to include the following language in the notice:

You may be required to actively participate in this lawsuit by responding to discovery requests, sitting for a deposition, and/or testifying at a trial that would be held in San Antonio, Texas.

Plaintiffs’ stated reason for opposing the inclusion of this language—that the language will have a chilling effect on participation—is unfounded. Defendants’ proposed language accurately

informs potential plaintiffs of their obligations with respect to this lawsuit. The fact that the proposed class includes disaster workers who may currently be working and temporarily residing in geographic locations far from the chosen venue weighs in favor of including such a notice.

IT IS THEREFORE ORDERED that Defendants' Joint Motion to Approve Their Proposed Notice Procedure [#106] is **GRANTED IN PART** as follows.

IT IS HEREBY ORDERED that the following language be included in the Notice and Consent Forms proposed by the parties:

You may be required to actively participate in this lawsuit by responding to discovery requests, sitting for a deposition, and/or testifying at a trial that would be held in San Antonio, Texas.

IT IS FURTHER ORDERED that Plaintiff is authorized to disseminate by first class U.S. mail, email, and text message the proposed Notice and Consent Forms attached to Plaintiff's brief [#104-1] in accordance with this order.

SIGNED this 14th day of August, 2020.



ELIZABETH S. ("BETSY") CHESTNEY
UNITED STATES MAGISTRATE JUDGE